

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PAULA DARBY
Plaintiff

vs.

KROGER TEXAS L.P.
Defendant.

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CIVIL ACTION NO: 4:21-cv-1762

DEFENDANT KROGER TEXAS L.P.'S NOTICE OF REMOVAL

Defendant Kroger Texas L.P. (“Defendant” or “Kroger”), incorrectly named as Kroger Texas, L.P., removes Cause No. 1166859 from the County Civil Court at Law No. 1 of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. § 1441(b).

I. STATE COURT ACTION

1. The above-styled cause was initially brought in the County Civil Court at Law No. 1 of Harris County, Texas. The state court action is styled *Paula Darby v. Kroger, Texas L.P.*, Cause No. 1166859. *See* Exhibit A, Plaintiff’s Original Petition (“Original Petition”).

II. PARTIES

2. According to her Original Petition, Plaintiff Paula Darby (“Plaintiff” or “Darby”) is a citizen of Harris County, Texas. *See* Exhibit A.

3. Defendant Kroger Texas L.P. is a citizen of Ohio, having been incorporated under the laws of the State of Ohio and having its principal place of business in the State of Ohio.

III. JURISDICTION

4. This Court has jurisdiction over the pending action, pursuant to 28 U.S.C. § 1332, on the basis of diversity jurisdiction because the claims in this action are between citizens of

different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. As set forth above, Darby is a citizen of Texas and Kroger is a citizen of Ohio. Therefore, there is complete diversity between the parties in this action.

6. In her Original Petition, Darby alleges that she “was shopping at a Kroger store in Harris County. While Plaintiff was shopping, a female employee crashed into the back of Plaintiff while pushing a cart containing canned goods.”¹ Darby has brought a cause of action against Kroger for negligence and in the alternative, premises liability.² Darby alleges that she “suffered severe physical and mental injuries as a result of Kroger’s premises liability and/or negligent activity”³ Darby is seeking actual damages for: past and future medical expenses; past and future pain and suffering; past and future physical disfigurement; past and future mental anguish; past lost wages and/or loss of earning capacity; diminished future earning capacity; past and future physical impairment; loss of enjoyment of life; and other monetary damages.⁴

7. In her Original Petition, Darby states that she “seeks monetary relief of more than \$100,000 but less than \$200,000.”⁵ Based on the Original Petition, the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

IV. TIMELINESS OF REMOVAL

8. Kroger waived service and entered a general appearance by filing an Original Answer to Darby’s Original Petition on April 29, 2021.⁶ Not more than thirty days have elapsed

¹ Ex. A at ¶ 7.1.

² *Id.* at ¶¶ 8.1-8.6.

³ *Id.* at ¶ 10.2.

⁴ *Id.* at ¶ 10.3.

⁵ *Id.* at ¶ 3.1.

since Kroger was served with process. Pursuant to 28 U.S.C. § 1446, this Notice of Removal is timely and proper.

V. CONDITIONS PRECEDENT

9. Kroger has tendered the filing fee of \$400.00 to the Clerk of the United States District Court for the Southern District of Texas, Houston Division, along with the original Notice of Removal. A copy of this Notice of Removal is also being filed in the County Civil Court at Law No. 1 of Harris County, Texas, and counsel for Darby is being provided with a copy of this Notice of Removal.

10. By filing this Notice of Removal, Kroger does not waive any defenses, affirmative claims, counterclaims, or third-party claims that may be available, nor does Kroger admit that Darby's claims exceed \$75,000.00, exclusive of interests and costs.

VI. EXHIBITS BEING FILED WITH THIS COURT

11. Accompanying this Notice of Removal are the following exhibits, which are being filed contemporaneously in this Court:

- Exhibit A: Plaintiff's Original Petition
- Exhibit B: Kroger's Special Exception, Original Answer to Plaintiff's Original Petition, and Jury Demand
- Exhibit C: State Court Docket Sheet
- Exhibit D: Notice of Filing Notice of Removal to the County Civil Court at Law No. 1 of Harris County, Texas and Counsel for Plaintiff

Because the claims in this action are between citizens of different states and the amount in controversy is in excess of \$75,000.00, exclusive of interest and costs, Kroger removes the

⁶ See Ex. A.

above-captioned case from the County Civil Court at Law No. 1 of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

BAKER • WOTRING LLP

/s/ Earnest W. Wotring

Earnest W. Wotring

Attorney-in-Charge

Federal ID No. 15284

State Bar No. 22012400

Karen R. Dow

Federal ID No. 18776

State Bar No. 06066800

Kimberly Dang

Federal ID No. 3502767

State Bar No. 24116246

700 JPMorgan Chase Tower

600 Travis Street

Houston, Texas 77002

Telephone: (713) 980-1700

Facsimile: (713) 980-1701

ewotring@bakerwotring.com

kdow@bakerwotring.com

kdang@bakerwotring.com

**ATTORNEYS FOR DEFENDANT
KROGER TEXAS L.P.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served on the following through e-filing on May 28, 2021.

Kenneth R. Baird
The Baird Law Firm
2323 South Voss Road, Suite 325
Houston, Texas 77057
kbaird@bairdlawfirm.net

/s/ Earnest W. Wotring
Earnest W. Wotring